United States Department of Labor
Employees' Compensation Appeals Board

S.J., Appellant	)	
and	)	**Docket No. 16-0279**
	)	**Issued: April 20, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Roxbury, MA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 1, 2015 appellant filed a timely appeal of an October 14, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.[2]

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish a consequential sural nerve injury; and (2) whether appellant met his burden of proof to establish that his 2015 surgery was causally related to his accepted right foot conditions.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal after OWCP rendered its October 14, 2015 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On January 16, 1996 appellant, then a 43-year-old letter carrier, filed a traumatic injury (Form CA-1) alleging that he slipped on ice on January 13, 1996 while removing mail from a relay and turned his right ankle. On April 4, 1996 OWCP accepted his claim for right ankle sprain.

Appellant filed a recurrence of disability (Form CA-2a) on August 24, 2002 and alleged that his right ankle never stopped hurting. He alleged that he had altered his way of walking and consequently developed a growth on the side of his right foot. On July 2, 2003 OWCP accepted appellant's recurrence of disability and the additional condition of joint instability of the right ankle.

Dr. Mark Slovenkai, a Board-certified orthopedic surgeon, performed right ankle lateral ligament reconstruction, peroneal tendon reconstruction, and calcaneal osteotomy on September 3, 2003. He performed additional right ankle surgery on August 25, 2004. On September 7, 2005 Dr. Slovenkai performed an excision of a superficial cutaneous neuroma and debridement of scar tissue on appellant's right posterolateral heel. He performed a reconstructed triple arthrodesis of appellant's right foot on February 28, 2007 with right distal tibia bone grafting, right sural neurectomy and implantation, and right second metatarsophalangeal joint capsulotomy. On April 9, 2008 Dr. Slovenkai performed a resection of a post-traumatic neuroma on the right sural nerves and implantation of the right sural nerve stump in the soleus musculature. He released appellant to return to light-duty work four hours a day on July 24, 2008. Dr. Slovenkai indicated that appellant could perform light-duty work eight hours a day on July 17, 2009.

OWCP referred appellant for vocational rehabilitation on May 21, 2009 and closed this file on April 20, 2010.

OWCP expanded appellant's accepted conditions to include acquired equinus deformity of the right foot, fifth hammertoe on the right, calcaneal spur on the right, disturbance of skin sensation, and pain in the limb on the right by letter of decision dated May 14, 2013. It also authorized additional surgery of toe arthroplasty on the same date. Dr. Slovenkai performed right fifth toe hammertoe correction with arthroplasty on July 17, 2013.

In a report dated July 22, 2014, Dr. Slovenkai noted that two months prior to that date appellant twisted his foot and ankle awkwardly while carrying suitcases down the stairs at his home. Appellant asserted that he jammed his heel and had exquisite pain over the lower leg where his previous sural nerve had been implanted. He continued to experience some shooting pain and fairly significant tenderness in that area. Dr. Slovenkai found tenderness at the junction of the gastroc soleus fascia with increased soft tissue swelling. He diagnosed partial gastroc soleus fascial tear of the right lower leg and plantar forefoot metatarsalgia.

Appellant underwent a magnetic resonance imaging (MRI) scan of his right lower leg on October 9, 2014 which demonstrated edema in the distal soleus muscle laterally compatible with muscle strain or contusion without discrete tear. On October 14, 2014 Dr. Slovenkai reviewed appellant's MRI scan and found a muscle contusion of the gastroc soleus. On October 16, 2014

he diagnosed calf strain and noted that appellant continued to experience symptoms over the sural nerve lateral leg implantation site. Dr. Slovenkai reported hypersensitivity in this area.

Appellant underwent an ultrasound on November 11, 2014 which demonstrated that appellant's right sural nerve was in a very superficial location adjoining the lesser saphenous vein. On December 22, 2014 Dr. Slovenkai opined that the superficial location of the right sural nerve was always going to be problematic for appellant with local trauma. Appellant reported hypersensitivity in that area.

Dr. Slovenkai diagnosed right recurrent sural nerve neuroma and recommended a revision sural nerve excision and muscle implantation on January 14, 2015. He opined that appellant exacerbated his accepted condition coming down some stairs in his home in the spring of 2014. Dr. Slovenkai opined that appellant's current condition was related to appellant's prior employment-related injury. He repeated his findings and recommendations on March 10, 2015.

By decision dated April 9, 2015, OWCP denied appellant's request for surgical removal of the nerve lesion and implantation of the nerve end. It explained that the incident of carrying suitcases down the stairs and twisting his foot and ankle was a new intervening event occurring outside of his federal employment. OWCP found that Dr. Slovenkai had not provided medical reasoning explaining how appellant's current condition was related to his accepted injury rather than the additional nonemployment event.

Appellant requested reconsideration through a letter dated September 16, 2015 and received on September 21, 2015. He submitted additional reports from Dr. Slovenkai. On June 24, 2015 Dr. Slovenkai indicated that appellant underwent revision sural nerve neuroma excision on June 8, 2015.

In a report dated July 21, 2015, Dr. Slovenkai described appellant's history of injury including the February 28, 2007 right sural neurectomy and implantation and the April 9, 2008 revision with implantation of the right nerve stump in the soleus musculature. He opined that the June 8, 2015 surgery was directly related to appellant's prior surgeries all stemming from his 1996 work-related injury.

On August 4, 2015 Dr. Slovenkai again opined that appellant's 2015 surgery was clearly related to his 1996 employment injuries. He asserted, "Clearly, he has undergone multiple reconstructive procedures involving surgical approaches over the posterolateral aspect of the ankle and lower leg which caused a recurrent scar tissue formation as well as scarring of the sural nerve and lateral heel nerves that required subsequent and persistent surgical intervention."

By decision dated October 14, 2015, OWCP reviewed the merits of appellant's claim, but denied modification of its April 9, 2015 decision. It found that appellant had sustained a new injury at home in 2014 and that Dr. Slovenkai failed to address this new injury in his reports opining that appellant's 2015 surgery was due to his accepted employment injury.

LEGAL PRECEDENT -- ISSUE 1

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that

flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. The Board has held that, once the work-connected character of any injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause and so long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable under the circumstances.[3]

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical reasoning explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.[4]

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician who OWCP, under authority delegated by the Secretary of Labor, considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation.[5] While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[6] To be entitled to reimbursement of medical expenses, a claimant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[7] In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.[8]

ANALYSIS -- ISSUES 1 & 2

The Board finds that appellant has not established a consequential injury nor that his 2015 surgery was due to his accepted employment injuries.

[3] *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994).

[4] *Charles W. Downey*, 54 ECAB 421 (2003).

[5] 5 U.S.C. § 8103; *see T.D.*, Docket No. 13-1505 (issued January 9, 2014); *L.D.*, 59 ECAB 648 (2008).

[6] *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

[7] *M.B.*, 58 ECAB 588 (2007).

[8] *See also J.H.*, Docket No. 12-1950 (issued February 13, 2013); *R.C.*, 58 ECAB 238 (2006).

OWCP accepted appellant's January 1996 claim for right ankle sprain, acquired equinus deformity of the right foot, fifth hammertoe on the right, calcaneal spur on the right, disturbance of skin sensation, and pain in the limb on the right. It authorized several surgeries including a February 28, 2007 reconstructive triple arthrodesis with right sural neurectomy and implantation and an April 9, 2008 right sural nerve post-traumatic neuroma resection and implantation of the right sural nerve stump in the soleus musculature.

In the spring of 2014 appellant injured his right calf carrying suitcases down the stairs at his home. He alleged that this incident resulted in a consequential injury to his sural nerve at the surgical implantation site and requested surgical authorization. Appellant bears the burden of proof to establish his claim for a consequential injury and his request for authorization for right sural nerve neuroma excision revision and proximal muscle implantation. The Board finds that he has not submitted sufficient medical evidence to establish his additional right sural nerve condition and surgical procedure as a consequence of his accepted right foot employment injury.

Appellant submitted reports from Dr. Slovenkai beginning July 22, 2014 noting that two months prior to that date appellant twisted his foot and ankle awkwardly while carrying suitcases down the stairs. Dr. Slovenkai diagnosed partial gastroc soleus fascial tear of the right lower leg and plantar forefoot metatarsalgia. He did not opine that appellant's stair incident was due to his accepted right foot conditions. Furthermore, this report does not sufficiently explain how appellant's twisting incident in 2014 was related to his accepted right foot conditions. As Dr. Slovenkai did not attribute appellant's right calf and sural nerve condition or resulting surgeries dated through 2013 to his accepted injuries, he has not supported either a consequential injury or the need for right sural nerve surgery in this report.

On October 16, 2014 Dr. Slovenkai diagnosed calf strain and noted that appellant continued to experience symptoms over the sural nerve lateral leg implantation site. He reported hypersensitivity in this area. In this note, Dr. Slovenkai did not clearly opine that appellant's current sural nerve condition was due to his accepted employment injury in 1996. He did not address whether or how the stair incident in 2014 impacted appellant's sural nerve. Without additional medical explanation of the relationships between appellant's accepted condition and his sural nerve injury, this report is not sufficiently well reasoned to establish either a consequential sural nerve condition or the need for surgery due to his accepted employment injuries.

Appellant underwent an ultrasound on November 11, 2014 which demonstrated that appellant's right sural nerve was in a very superficial location adjoining the lesser saphenous vein. On December 22, 2014 Dr. Slovenkai opined that the superficial location of the right sural nerve was always going to be problematic for appellant with local trauma. He diagnosed right recurrent sural nerve neuroma and recommended a revision sural nerve excision and muscle implantation on January 14, 2015. Dr. Slovenkai reported that appellant exacerbated his accepted condition coming down some stairs in his home in the spring of 2014. He opined that appellant's current condition was related to appellant's prior employment-related injury. Dr. Slovenkai repeated his findings and recommendations on March 10, 2015.

While these reports suggest that the location of appellant's sural nerve, following the 2007 and 2008 surgeries, leave it vulnerable to further injury, the Board has previously held that

the force of an intervening cause on a previously weakened site, does not elevate the resulting additional condition to a direct and natural result of the accepted employment injury.

In a report dated July 21, 2015, Dr. Slovenkai described appellant's history of injury including the February 28, 2007 right sural neurectomy and implantation and the April 9, 2008 revision with implantation of the right nerve stump in the soleus musculature. He opined that the June 8, 2015 surgery was directly related to appellant's prior surgeries all stemming from his 1996 work-related injury. On August 4, 2015 Dr. Slovenkai again opined that appellant's 2015 surgery was clearly related to his 1996 employment injuries as appellant's surgeries resulted in recurrent scar tissue formation as well as scarring of the sural nerve that required additional surgical intervention. These reports do not address the 2014 nonemployment incident and are therefore insufficient to establish whether appellant's 2014 sural nerve condition was due to his accepted surgeries or interrupted by the intervening cause of the stair incident.

The Board finds that there is insufficient rationalized medical evidence of record to establish either that appellant's right sural nerve condition or the need for additional surgery was a consequence of his accepted employment injury. Appellant did not meet his burden of proof to establish either a consequential injury or authorization for medical treatment for his right sural nerve condition.

CONCLUSION

The Board finds that appellant failed to establish an additional right sural condition as a consequence of his January 13, 1996 employment injury and failed to establish that his need for surgery in 2015 was causally related to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 14, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board